

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VICTOR RICHARDSON,

DEC 12 2001

Plaintiff,

R. Peterson
JP CLERK

v.

No. CIV-00-0416 KBM/WWD

GARY JOHNSON, ET AL.,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on a number of motions to dismiss (Doc. #17, #19, #33, #35, and #37) filed by various Defendants. Plaintiff is a New Mexico state prisoner. For the reasons below, the first motion filed will be granted, and Plaintiff's complaint will be dismissed without prejudice.

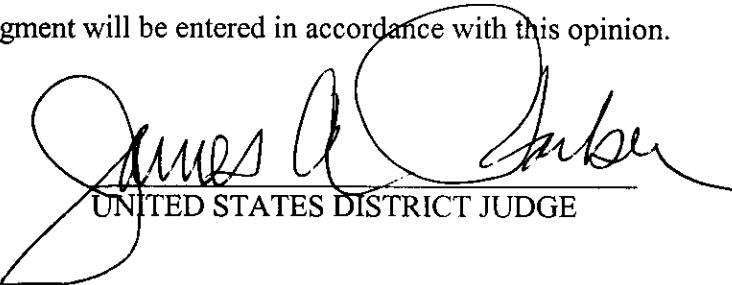
The complaint asserts a number of claims arising from Plaintiff's transfer to the maximum-security Wallens Ridge State Prison in Virginia, following a disturbance at a detention facility operated by Wackenhut Corporation in Guadalupe County, New Mexico. In Count 1, Plaintiff alleges he was transferred even though he did not participate in the disturbance, he was given no prior notice or explanation for the transfer, and he was subjected to excessive force at Wallens Ridge. He asserts his transfer violated federal and state constitutional rights of due process. Count 2 claims the harsh conditions during and after transfer violated federal and state constitutional protections against cruel and unusual punishment. Count 3 asserts that Plaintiff was repeatedly subjected to strip searches and other body searches, and he was harshly restrained, in violation of the Fourth Amendment's protections against unreasonable search and seizure. Count 4 claims that "an Interstate Compact" was violated by the transfer and by related conditions of Plaintiff's confinement, and Count 5 asserts an equal protection violation based on disparate treatment of Plaintiff. Count 6 claims Defendants' actions violated the Thirteenth Amendment's prohibition of slavery. In Count 7 Plaintiff asserts claims based on

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respondeat superior liability, and Count 8 claims Defendants conspired to violate Plaintiff's various constitutional protections. Count 9 claims that Defendants' conduct was wanton, deliberate and malicious, entitling Plaintiff to punitive damages. All Defendants are named in their individual and official capacities. Plaintiff seeks damages and prospective equitable relief.

The first motion to dismiss filed by the New Mexico Defendants seeks dismissal of all claims for failure to exhaust administrative remedies as required under 42 U.S.C. § 1997e(a). As stated by Defendants, Plaintiff's complaint contains no specific allegations regarding exhaustion. In response to the motion, Plaintiff argues that, because he has been returned to New Mexico, he should not be required to exhaust remedies for the abuses that occurred in Virginia. On the other hand, Plaintiff asserts a number of claims against New Mexico Defendants. And although he correctly argues the exhaustion requirement in § 1997e(a) is not jurisdictional, the Supreme Court recently ruled that exhaustion is required in all inmate cases. *Booth v. Churner*, 531 U.S. 956, ---, 121 S.Ct. 1819, 1825 n.6 (2001) ("an inmate must exhaust irrespective of the forms of relief sought and offered through administrative avenues."). The result is unavoidable: Plaintiff's claims against all Defendants must be dismissed without prejudice for failure to exhaust administrative remedies. *Booth*, 531 U.S. at ---, 121 S.Ct. at 1822; *see also Harris v. Garner*, 216 F.3d 970, 980 (11th Cir. 2000), *cert. denied*, *Harris v. Garner*, --- U.S. ---, 121 S.Ct. 2214 (2001).

IT IS THEREFORE ORDERED that the New Mexico Defendants' Motion to Dismiss I (Doc. #17) is GRANTED; Plaintiff's complaint will be DISMISSED without prejudice; all other pending motions are DENIED as moot; and judgment will be entered in accordance with this opinion.



James A. Ober
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

VICTOR RICHARDSON,

Plaintiff,

v.

No. CIV-00-0416 *JP* KBM/WWD

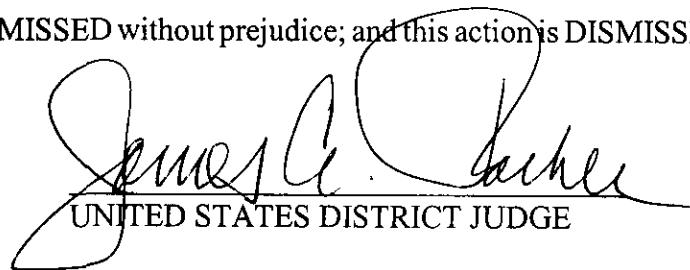
GARY JOHNSON, ET AL.,

Defendants.

FINAL JUDGMENT AND ORDER OF DISMISSAL

This matter having come before the Court on a number of motions to dismiss (Doc. #17, #19, #33, #35, and #37) filed by certain Defendants; Plaintiff being incarcerated; and the Court having entered a memorandum opinion and order this date dismissing Plaintiff's complaint,

IT IS THEREFORE ORDERED that FINAL JUDGMENT is hereby entered in favor of all Defendants; Plaintiff's complaint is DISMISSED without prejudice; and this action is DISMISSED.



James A. Becker
UNITED STATES DISTRICT JUDGE